

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2452-05
Bill No.: Perfected SS for SCS for SB 668
Subject: Employees - Employers; Workers' Compensation
Type: Original
Date: April 18, 2007

Bill Summary: This proposal modifies the workers' compensation payments.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	\$0 to (Unknown)	\$194,022 to (Unknown)	\$194,022 to (Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0 to (Unknown)	\$194,022 to (Unknown)	\$194,022 to (Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Worker Compensation Fund	(Unknown over \$30,000)	(Unknown over \$30,000)	(Unknown over \$30,000)
Second Injury Fund	Unknown	Unknown	Unknown
Conservation Fund	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Road Fund	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown to (Unknown over \$30,000)	Unknown to (Unknown over \$30,000)	Unknown to (Unknown over \$30,000)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

In response to a previous version of this bill officials at the **Department of Labor and Industrial Relations** assume the Department's Division of Workers' Compensation (Division) uses and manages two separate funds. The Workers' Compensation Fund (also referred to as the workers' compensation administrative fund) is used to pay for all expenses of the Division of Workers' Compensation including all FTE employed by the Division and expenses and equipment used by the Division. In addition, other state agencies including the Attorney General's Office, the Office of Administration and the Department of Labor and Industrial Relations are appropriated money from this fund. The Second Injury Fund is used to pay benefits to injured workers who apply for such benefits. This fund is managed by the Division, defended by the Attorney General and the State Treasurer is custodian of the fund. Moneys are also appropriated to the later two agencies to pay for expenses incurred by those agencies relating to the fund. The workers' compensation fund is funded by a premium tax on employers and has a cap of two percent on the tax it can impose. The Second Injury Fund is funded by a surcharge on employer's premiums and has a cap of three percent on the surcharge it can impose.

ASSUMPTION (continued)

The Department assumes the bill intends to eliminate the permanent partial disability benefits from the Second Injury Fund. In fiscal years 2000 through 2006 the Second Injury Fund paid benefits on 32,283 cases with payments totaling approximately \$339,210,623 in that time period. These benefit payments were for the benefit categories of permanent partial disability (\$212,966,679), permanent total disability (\$117,429,442), uninsured employer medical (\$4,492,894), second job wage loss (\$1,619,845), uninsured employer death (\$1,449,538), and physical rehabilitation (\$1,252,225). Depending upon the category of benefit claimed, benefit payments will probably be reduced gradually over time as claims are settled and paid. Some category benefits available from the Second Injury Fund have a longer life than others depending upon the complexities of the case and the determination of the parties involved as to the value of the case. For instance, a claim for permanent total disability historically takes longer to resolve than a claim for lost wages from a second job or rehabilitation benefits paid while the injured worker is receiving rehabilitation services. At the same time, the liabilities incurred by the Second Injury Fund for awards of Permanent Total Disability will be ongoing, usually for the life of the claimant, while benefits for Permanent Partial Disability benefits are paid in a lump sum and once the payment is made the case is closed.

The Department is unable to determine the potential savings to the Second Injury Fund. For example, claims filed against the Second Injury Fund alleging permanent total disability benefits were not taken to an evidentiary hearing but were compromised and settled for dollar amounts not exceeding \$60,000. If the intent of the proposed legislation is to eliminate the ability to settle the PTD cases under section 287.380 RSMo it needs to state that with clarity to avert cash flow problems to the Second Injury Fund. The proposed legislation leaves the thresholds in subsection 1 of section 287.220 intact. However subsection 2 of section 287.220 eliminates reference to permanent partial disability benefits. This would eliminate the employee's ability to file a Claim for Compensation against the Second Injury Fund for permanent partial disability benefits. However subsection 1 references the thresholds which impact permanent partial disability claims. Assuming that the employee files a claim against the Second Injury Fund alleging permanent partial and permanent total disability subsection 2 of section 287.220 states that the State Treasurer's Office will not be named as a party for the Treasurer's Office will not be able to defend the permanent partial benefits. However, the State Treasurer's Office will defend the permanent total or death claims only. In addition, subsection 1 of section 287.220 states that the thresholds [15% of a major extremity and 12% body as whole] do not apply to permanent total disability cases. It is unknown why the thresholds have been referenced in subsection 1 of section 287.220 as they would not impact upon the permanent total disability benefits anyway.

Additionally, the Department is unable at this time to determine how the recent Missouri Supreme Court decision in *Schoemehl v. Treasurer of the State of Missouri*, __ S.W. 3d 2007 WL

ASSUMPTION (continued)

58370 (Mo. 2007) will impact payouts for cases involving permanent total disability benefits over the long term. This case may require reopening of some old cases (including some cases going back to 1943) and payments to be made to the dependents of the employee who was originally awarded weekly permanent total disability benefits.

The Department does not receive any appropriations or funds from the Second Injury Fund for Full Time Employees [FTE]. The Division's responsibility under the existing statutory framework is ministerial in nature. The Division's FTEs who handle the payment of benefits and the collection of surcharge are paid through the workers' compensation administrative fund. The Department assumes that elimination of the permanent partial disability payments from the Second Injury Fund will require changes to the Division's computer system, the cost of which is unknown.

In addition, the Division needs to annually enter into a contract for an actuarial study of the Second Injury Fund. The study needs to determine future liabilities of the Second Injury Fund, solvency of the Second Injury Fund, forecasted expenditures and appropriate funding levels, including potential payouts on the pending Claims for Compensation that have been filed by the employee alleging permanent partial disability benefits. Based on the cost of the previous actuarial study conducted on the Second Injury Fund, the Division estimates that the cost of an expanded actuarial study for the purposes described herein would be approximately \$75,000 to \$100,000. If an actuarial study needs to be annually conducted there would be an approximate expense of \$75,000 to the Workers' Compensation Fund.

In previous response to SB665 officials at the **Department of Labor and Industrial Relations** assume this bill requires the Department's Division of Workers' Compensation (Division) to conduct annual actuarial studies on the Second Injury Fund. Currently, the Division is required to conduct an actuarial study every three years. Requiring annual studies will increase the cost to the Division. The last two actuarial studies cost \$30,000 in 2001 and \$27,000 in 2004. The Department assumes that future actuarial studies will cost over \$30,000 annually to comply with the provisions of the bill.

Officials at the **Office of Administration** assume the proposed legislation appears to be in response to the recent Missouri Supreme Court decision *Schoemehl v. Treasurer*, MLW No. 55251, wherein the court ruled that permanent total disability benefits should be paid to surviving dependents of an injured employee after the employee dies, even if the death was unrelated to the work injury.

The State of Missouri's self-insured workers' compensation program, the Central Accident

ASSUMPTION (continued)

Reporting Office (CARO) covers state employees (excluding MoDOT, Missouri State Highway Patrol and University of Missouri systems). CARO is currently obligated to ongoing weekly benefits to 15 past state employees deemed to be permanently and totally disabled. Of these, 14 cases have the potential for extended dependent obligations at the time of death of the employee resulting from the Schoemehl decision. Currently CARO does not maintain dependent status on these 14 cases. In addition to these cases, CARO has identified an additional 13 cases that may result in permanent total disability in the very near future.

The U.S. Census Bureau indicates of the total households of one wage earner and two earners or more, single wage earner households account for 50% of the total. Applying the 50% to the 14 cases, 7 cases may be single wage earner households, thus at the time of death of the employee, the spouse may be a sole dependent.

The average weekly compensation rate for these cases is \$243.61 multiplied by the 7 cases equate to \$1,705.27 in weekly benefits.

Of the additional 13 cases, 6.5 cases would be considered as possible single wage earner households with spouses as sole dependents. The average weekly compensation rate for these cases is \$311.38 multiplied by the 6.5 cases equate to \$2,025.92.

Combining the two sets, the total weekly obligation to extend benefits to sole dependents is \$3,731.19 or \$194,021.88 annually.

The length of this obligation is difficult to assume. However assuming the employee should die of natural causes and that the spouse may be near the age of the employee, we are projecting 10 additional years for the remaining spouse. Therefore the savings would be for approximately 10 years for the case identified. This does not take into consideration any minors that may be deemed to be sole dependents at time of the employee's death.

While the state, to date, has not yet incurred any additional cost due to the Schoemehl decision, we do assume an annual cost savings of approximately \$194,022 to the State of Missouri with the proposed legislation that rejects and abrogates the Schoemehl ruling. No cost inflator is utilized in that weekly compensation rates remain the same throughout the period of obligation.

Officials at the **Missouri Department of Transportation (MoDOT)** assume the fiscal impact would be unknown and would depend on the number of permanent total disability cases MoDOT would have in the future.

Officials at the **Office of the Attorney General (AGO)** assumes that this proposal crease no fiscal impact at this time, as there will be a large open Second Injury Fund caseload to defend into the foreseeable future. AGO assumes that there will be potential cost savings in the long term.

In response to a previous version of this bill officials at the **Department of Economic Development, Department of Insurance, Financial Institutions and Professional Registration** and the **Office of the State Treasurer** assume that there is no fiscal impact from this proposal.

In response to a previous version of this bill officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

<u>FISCAL IMPACT - State Government</u>	FY 2008	FY 2009	FY 2010
	(10 Mo.)		
GENERAL REVENUE			
<u>Savings - General Revenue</u>			
Worker Compensation Payments	\$0	\$194,022	\$194,022
<u>Cost - General Revenue</u>			
Additional Cost to Primary Insurer	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE			
	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$194,022 to</u> <u>(Unknown)</u>	<u>\$194,022 to</u> <u>(Unknown)</u>

CONSERVATION FUND

<u>Savings</u> - Conservation Fund			
Worker Compensation Payments	Unknown	Unknown	Unknown
<u>Cost</u> - Conservation Fund			
Additional Cost to Primary Insurer	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

ESTIMATED NET EFFECT ON CONSERVATION FUND

	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>
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ROAD FUND

<u>Savings</u> - Road Fund			
Worker Compensation Payments	Unknown	Unknown	Unknown
<u>Cost</u> - Road Fund			
Additional Cost to Primary Insurer	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

ESTIMATED NET EFFECT ON ROAD FUND

	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>
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WORKER COMPENSATION FUND

<u>Cost</u> - Worker Compensation Fund			
Yearly audit	<u>(Unknown over</u> <u>\$30,000)</u>	<u>(Unknown over</u> <u>\$30,000)</u>	<u>(Unknown over</u> <u>\$30,000)</u>

ESTIMATED NET EFFECT ON WORKER COMPENSATION FUND

	<u>(Unknown over</u> <u>\$30,000)</u>	<u>(Unknown over</u> <u>\$30,000)</u>	<u>(Unknown over</u> <u>\$30,000)</u>
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SECOND INJURY FUND

Savings - Second Injury Fund

Permanent Partial Disability Benefits	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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**ESTIMATED NET EFFECT ON
SECOND INJURY FUND**

	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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FISCAL IMPACT - Local Government

FY 2008 (10 Mo.)	FY 2009	FY 2010
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

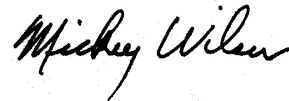
FISCAL DESCRIPTION

This bill modifies workers' compensation payments.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Office of the Attorney General
Office of Administration
Department of Economic Development
Office of the State Treasurer
Office of the Secretary of State
Department of Transportation
Department of Insurance, Financial Institutions and Professional Registration



Mickey Wilson, CPA
Director
April 18, 2007